

1 objections to any of those documents, 81 to  
2 88.

3 MR. ROSE: Thank you.

4 JUDGE SIPPEL: Eighty-one to 88  
5 are identified as Mr. Cohen has indicated.  
6 Eighty-one through 88 are received in evidence  
7 at WTV Exhibits 81 through 88.

8 (Whereupon, the documents referred  
9 to were marked as WealthTV Exhibit  
10 Nos. 81 through 88 for identifica-  
11 tion and were received in  
12 evidence.)

13 JUDGE SIPPEL: Thank you very  
14 much.

15 It's almost five after four up  
16 there. I think it's appropriate for the  
17 reporter, if nothing else, that we take a bit  
18 of a break here. I'll say between 15 and 20.  
19 I'll be back in 20 minutes. You know, that's  
20 all I'm going to say.

21 I know we're going to have to go a  
22 little bit late tonight, but I don't expect

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1       that we're going to be able to get both sides  
2       in today. Are you expecting that?

3               MR. COHEN: Not anymore.

4               (Laughter.)

5               JUDGE SIPPEL: So, Ms. Wallman,  
6       this is going to cut into your time. Tomorrow  
7       morning we're going to have to pick up with  
8       exhibits again.

9               MS. WALLMAN: I understand that.

10              JUDGE SIPPEL: All right. As long  
11      as you understand. I mean, I'll go. Let me  
12      stick my neck out. I mean I'll commit to six  
13      o'clock. That's if everybody is interested in  
14      staying until six, but if somebody, you know,  
15      is going to object to that strongly -- anyway,  
16      that's where we are. Let's not waste more  
17      time.

18              MR. COHEN: The only thing I would  
19      say, Your Honor, is if we're going to try to  
20      work out some kind of agreement about Mr.  
21      Herring's testimony before he testifies, and  
22      if he is the first witness, I'll certainly

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1 stay till six, but once we're talking about  
2 working that out, preparing for his cross-  
3 examination tomorrow where time is getting --

4 JUDGE SIPPEL: I understand.

5 MR. COHEN: But nine or ten  
6 tonight, you know --

7 JUDGE SIPPEL: I understand, and  
8 I'm willing to, you know, start --

9 MR. COHEN: So we'll work as long  
10 as makes sense, but we do have to try to work  
11 that out as well.

12 JUDGE SIPPEL: Well, that's fair  
13 enough. I've got a lot of people to think  
14 about --

15 MR. COHEN: Of course, Your Honor.

16 JUDGE SIPPEL: -- including  
17 myself, and six o'clock seems reasonable to  
18 me, and what we'll do is we'll start at ten  
19 again tomorrow to give a little bit more time  
20 to see what can be done on the written  
21 testimony.

22 The time now I have is about five

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1 after four. So give me 20 minutes by that  
2 clock.

3 Thank you very much. We're in  
4 recess.

5 (Whereupon, the foregoing matter  
6 went off the record at 4:07 p.m.  
7 and went back on the record at  
8 4:42 p.m.)

9 JUDGE SIPPEL: On the record.  
10 We'll do the best we can.

11 MR. ROSE: I hope we can get  
12 through this last bit of exhibit based on the  
13 ruling so far a little quicker than we have  
14 before.

15 JUDGE SIPPEL: We'll try. I'll  
16 rely on your folks to help though.

17 All right. We've got, I think, 88  
18 was the last one in.

19 MR. COHEN: Yes, sir.

20 JUDGE SIPPEL: Okay. Well, let's  
21 start with 89.

22 MR. ROSE: Eighty-nine is an E

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1 mail from Wealth Media to Comcast. It's  
2 essentially being offered as an admission  
3 Comcast made for part of the series. It's an  
4 admission.

5 MR. SOLOMON: Your Honor, we  
6 object. It's actually three separate  
7 unconnected E-mails in 89. So I think we  
8 should go through them one by one. The first  
9 one, it's not even clear that it's an E-mail.  
10 It's difficult to authenticate. It's part of  
11 an E-mail apparently. It purports to be an E-  
12 mail. It doesn't say who it's addressed to.  
13 It says who it's from. I don't believe it's  
14 address to Mr. Herring. So I don't think Mr.  
15 Herring can testify about it.

16 There are questions about there's  
17 a big space at the top. So it doesn't really  
18 look like an E-mail looks, and then the font,  
19 if you look closely, the font of the person  
20 whose name is at the bottom, Alan, is  
21 different than the font of the text.

22 So it's not clear what the

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1 foundation is, who can authenticate it. It's  
2 not really the best evidence. It's not clear  
3 that it's an actual E-mail.

4  
5 MR. ROSE: It does look like a  
6 piece of the address was taken out. I don't  
7 know that we have the original which does have  
8 the address, but Mr. Herring is going to be  
9 testifying about that.

10 MR. SOLOMON: But Mr. Herring, my  
11 understanding is he doesn't purport to be the  
12 recipient of it.

13 MR. ROSE: It was forwarded to  
14 him. It wasn't addressed to him.

15 JUDGE SIPPEL: Where does it say  
16 it was forwarded?

17 MR. SOLOMON: I don't know how it  
18 gets to him.

19 MR. ROSE: He's going to say that  
20 is not on the document.

21 MR. SOLOMON: Again, Your Honor, I  
22 don't understand. If someone wants to testify

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1 to something, but to admit this into evidence  
2 when it doesn't say who it was addressed to at  
3 all, let along that Mr. Herring received it.

4 MR. TOLLIN: Yeah, there's no "to"  
5 and "from" line either.

6 JUDGE SIPPEL: It's identified as  
7 89, but it's rejected. There is not a  
8 sufficient foundation for receiving this. You  
9 know, we're not going to take the time on the  
10 record now to do a trial preparation fix that  
11 should have been done. So 89 is identified  
12 but rejected as unreliable.

13 (Whereupon, the document referred  
14 to was marked as WealthTV Exhibit  
15 No. 89 for identification and  
16 rejected from evidence.)

17 JUDGE SIPPEL: The next item will  
18 be 90.

19 MR. COHEN: I'm going to withdraw  
20 our objections, Mr. Rose, to 90 and 91. So if  
21 you want to just describe them for the Court.

22 MR. SCHONMAN: Your Honor, are you

1 rejecting all three E-mails in Exhibit 89?

2 JUDGE SIPPEL: Well, we never got  
3 past the first one.

4 MR. SOLOMON: Well, the other two,  
5 I think are fairly straightforward. These are  
6 E-mails from people within WealthTV to each  
7 other, but not witnesses who are being called  
8 to testify. So, again, there's no one that  
9 can be cross-examined about the E-mails  
10 because the sender and the recipient haven't  
11 been called to testify by WealthTV.

12 JUDGE SIPPEL: Are there  
13 objections to the --

14 MR. SOLOMON: Yes, we object to  
15 those parts of Exhibit 89 as well.

16 JUDGE SIPPEL: And the parts that  
17 you identified have to do with exactly what?

18 MR. SOLOMON: The second document  
19 is an E-mail from Donna Thomas who was a  
20 WealthTV employee to presumably Robert Herring  
21 of WealthTV. They're describing to each other  
22 an E-mail that one of them got from Alan, what

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1 that person said to Alan, what somebody said,  
2 and they're purporting to say what Steve Burke  
3 of Comcast told somebody at WealthTV.

4 Neither of the people who sent --  
5 the person who sent the E-mail, Donna Thomas,  
6 is not testifying, nor is the recipient,  
7 Robert Herring.

8 JUDGE SIPPEL: Well, it just  
9 sounds like a lot of hearsay on hearsay. Who  
10 wants to handle this? Mr. Rose, Ms. Wallman,  
11 Mr. Feld? Anybody want to take a shot at  
12 that?

13 MR. ROSE: I think the other E-  
14 mails are internal Wealth E-mails. The one  
15 that we were trying to get in was the  
16 statement by the Comcast, Mr. Dannenbaum here,  
17 and you've already ruled on that. So.

18 JUDGE SIPPEL: I don't see this at  
19 all. What about the third one?

20 MR. SOLOMON: The third one is  
21 basically the same as the second, between two  
22 WealthTV employees talkinga bout what Mr.

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1       Dannenbaum said.

2                   JUDGE SIPPEL:     None of those  
3       people are going to be called as witnesses,  
4       are they?

5                   MR. SOLOMON:   Neither the sender  
6       nor the recipient of the E-mail. Obviously  
7       they can cross-examine. Mr. Dannenbaum is  
8       going to appear. They can cross-examine him  
9       however they want, but this isn't properly  
10      evidence as to what he said.

11                  JUDGE SIPPEL:   Yeah, it's not  
12      coming in certainly as the best case-in-chief.  
13      All right. The ruling is the same with  
14      respect to all three, rejected basically as  
15      unreliable since there's not going to be a  
16      stand-up witness that's going to be cross-  
17      examined on the documents.

18                  Number 90.

19                  MR. ROSE:     I believe 90 and 91  
20      have no objections at this point.

21                  MR. COHEN:   That's correct.

22                  JUDGE SIPPEL:   Ninety and 91 are

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1 identified as -- what are they?

2 MR. ROSE: Ninety is a press  
3 release by In Demand. Ninety-one is also a  
4 press release by In Demand.

5 MR. COHEN: The only question I  
6 have for you, Mr. Rose, is is 91 the complete  
7 press release? I don't object to the press  
8 release, but I can't tell from 91 whether it's  
9 actually a complete document.

10 MR. ROSE: This appears to be  
11 WealthTV's record of the press release rather  
12 than the complete document.

13 MR. COHEN: Then I guess I  
14 misunderstood, Your Honor, and let me raise  
15 mine on 91 because I guess the first line, "By  
16 March 2005, NHD claims to be the most widely  
17 distributed HDTV network on cable." I assume  
18 that's commentary that somebody has put in.

19 This is the top line, Your Honor,  
20 of 91, rather than from the document that I  
21 have. I might have been a little hasty.

22 I mean, I recognize the middle

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1 portion of this as being from a description of  
2 NHD networks and their various press releases,  
3 but I guess I was a little hasty. I didn't  
4 realize that this was essentially a clipped  
5 together document with an argument on top.

6 JUDGE SIPPEL: Well, if we  
7 eliminated the top statement, that "by March  
8 2005," et cetera, and "it claims to be the  
9 most widely distributed"; if we eliminated  
10 that, would the rest of it be admissible --

11 MR. COHEN: Yes.

12 JUDGE SIPPEL: -- and  
13 unobjectionable?

14 MR. COHEN: Yes. I mean, if I'm  
15 right about the top line and if they'll  
16 withdraw that top line.

17 JUDGE SIPPEL: All right.

18 MS. WALLMAN: We're prepared to  
19 withdraw the top line. We only wanted to rely  
20 on it as a statement by NHD about NHD.

21 JUDGE SIPPEL: Okay. We're going  
22 to strike then the top line, which actually is

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1 one line and three other words, and then start  
2 the exhibit with "about INHD networks" as the  
3 heading and then down through, and with that  
4 stricken, 91 is received in evidence,  
5 identified and received in evidence as WTV 91,  
6 and also 90 is identified and received in  
7 evidence as WTV Exhibit 90.

8 (Whereupon, the documents referred  
9 to were marked as Wealth TV  
10 Exhibit Nos. 90 and 91 for  
11 identification and were received  
12 in evidence.)

13 JUDGE SIPPEL: Yes?

14 MR. SCHONMAN: Your Honor, I just  
15 have a question about 90.

16 JUDGE SIPPEL: Yes.

17 MR. SCHONMAN: I thought I heard a  
18 reference to 90 being a press release. It  
19 looks to be more like a news magazine story.

20 JUDGE SIPPEL: Okay. Go back and  
21 take a look at it. Roman Video Production to  
22 Pro (unintelligible) Magazine, Icon. Well,

1 Mr. Schonman has a point. Does that change  
2 anybody's -- does it change your objection to  
3 it or not objection to it, Mr. Cohen?

4 MR. COHEN: Well, you know, Mr.  
5 Mills, I don't know if you know this document  
6 better than I do. I thought this was a press  
7 release that was sort of stuck in this  
8 magazine. That was my understanding.

9 MR. MILLS: Mine, too.

10 MS. WALLMAN: Ours, too.

11 JUDGE SIPPEL: I'm sorry. I  
12 didn't hear that.

13 MR. COHEN: I was saying --

14 MR. ROSE: It shouldn't be in  
15 something.

16 JUDGE SIPPEL: So you agree.

17 MR. COHEN: I'm trying to recover  
18 from that.

19 (Laughter.)

20 JUDGE SIPPEL: I'm sorry.

21 MR. COHEN: We think it's a press  
22 release that was essentially put in the

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1 magazine article, that was stuck into a  
2 magazine, but we think the substance of it was  
3 content generated by NHD. So consistent with  
4 the earlier ruling today, Mr. Schonman is  
5 right on the format, but I think we're not  
6 raising it. We're not objecting.

7 JUDGE SIPPEL: Thank you.

8 And 90 as identified is received  
9 as WTV Exhibit 90 also.

10 All right.

11 MR. ROSE: Ninety-two is an  
12 article of a source that the Court has already  
13 ruled on, and we'll withdraw it for that  
14 reason.

15 JUDGE SIPPEL: Ninety-two is  
16 withdrawn. Thank you.

17 (Whereupon, the document referred  
18 to as WealthTV Exhibit No. 92 was  
19 withdrawn from evidence.)

20 MR. ROSE: Ninety-three is a press  
21 release by Time Warner and there appears to be  
22 no objection.

1 JUDGE SIPPEL: With no objection,  
2 then WTV Exhibit 93 as a press release is  
3 identified and received in evidence.

4 (Whereupon, the document referred  
5 to was marked as WealthTV Exhibit  
6 No. 93 for identification and  
7 received in evidence.)

8 MR. ROSE: Ninety-four is a press  
9 release by In Demand. There do appear to be  
10 objections to that one.

11 MR. COHEN: Well, consistent with  
12 here Your Honor has gone today on reliability  
13 of press releases, we will withdraw our  
14 objections.

15 JUDGE SIPPEL: Thank you.

16 Exhibit 94 is an In Demand press  
17 release as identified and moved into evidence  
18 by WealthTV, and it is received as WealthTV,  
19 WTV Exhibit 94.

20 Thank you.

21 (Whereupon, the document referred  
22 to was marked as WealthTV Exhibit

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1 No. 94 for identification and  
2 received in evidence.)

3 MR. ROSE: Ninety-five that we're  
4 withdrawing is an article that you've already  
5 ruled on.

6 JUDGE SIPPEL: Exhibit 95 is  
7 withdrawn. Thank you.

8 MR. ROSE: As is 96.

9 JUDGE SIPPEL: Ninety-five, 96 are  
10 both withdrawn. Thank you.

11 (Whereupon, the documents referred  
12 to as WealthTV Exhibit Nos. 95 and  
13 96 were withdrawn from evidence.)

14 MR. ROSE: Ninety-seven is a  
15 presentation made to Mr. Goldberg of Time  
16 Warner by WealthTV. We proffer that one. It  
17 appears to be objectionable.

18 MR. COHEN: We object to that,  
19 Your Honor. This, unlike lots of other  
20 presentations that were to by Time Warner and  
21 other parties, the context here is important.  
22 This was a meeting with counsel after we were

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1 notified that WealthTV is intending unless  
2 they can resolve their carriage dispute with  
3 us to bring, you know, to bring a proceeding  
4 before the FCC.

5 It is not -- it is riddled with  
6 kind of arguments like on the last page, page  
7 3292, the interests of the FCC. This is  
8 essentially a litigation document.

9 There are lots of documents that  
10 are going to come into the record here in  
11 which WealthTV was making presentations,  
12 including presentations to Time Warner, with  
13 respect to its efforts to gain carriage and  
14 the reasons why it should be carried, but if  
15 we look at that page, if we look at the page  
16 before, a fair treatment of WealthTV, this was  
17 essentially a threat of litigation  
18 presentation.

19 I think it's prejudicial. There's  
20 lots of hearsay in it. Mr. Herring can  
21 testify about this meeting. Our witnesses  
22 will testify about this meeting, but this is

1 not a document generated in the ordinary  
2 course of business. This was a document  
3 essentially intentioned to bludgeon us into  
4 resolving this.

5 MS. WALLMAN: Your Honor, the  
6 context of this presentation is not generally  
7 at odds with what Mr. Cohen has just said, but  
8 this does reflect a subsequent meeting after  
9 a meeting that did involve potential  
10 settlement discussions, where the frame of  
11 reference was let's get back on track talking  
12 about whether there could be carriage.

13 And I'm informed that the final  
14 side was not given as part of the  
15 presentation. Because it was produced because  
16 it was called for by the document requested,  
17 and so we included a complete copy here.

18 MR. COHEN: Your Honor, the June  
19 meeting was a meeting at which Ms. Wallman and  
20 Mr. Harding attended along with Mr. Zimmerman,  
21 and it was a counsel meeting.

22 There was a meeting in July, July

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1 18th --

2 JUDGE SIPPEL: Now, what year are  
3 we talking?

4 MR. COHEN: 2007.

5 -- in which there was a "get back  
6 on track" meeting. I do not understand  
7 anybody who's saying that this presentation  
8 was made at that July 18th meeting. That  
9 would be a different thing for me. I agree  
10 with you that there was a subsequent meeting,  
11 but this is the date of the meeting in  
12 Washington that Ms. Wallman and Mr. Hardison  
13 attended, and this was a counsel meeting.  
14 Then there was, in fact, a period of time  
15 after that where there were business  
16 negotiations. Your Honor will hear from both  
17 sides about that, but my objection is to this  
18 document.

19 JUDGE SIPPEL: Well, I'm a little  
20 confused now. This document shows a meeting,  
21 the outline or what you will of a meeting.  
22 Are these -- what do they call these things?

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1 again? -- are these like a slide presentation?

2 MR. COHEN: Like a PowerPoint, a  
3 deck, I think, is the way we refer to them in  
4 this case.

5 JUDGE SIPPEL: It's a deck  
6 presentation?

7 MR. COHEN: Yes.

8 JUDGE SIPPEL: And what was the  
9 date that the presentation was made?

10 MR. COHEN: June 27th is the date  
11 on this one. It's in Mr. Goldberg's  
12 testimony. I'd have to check, but there was  
13 a meeting in June in Washington with counsel  
14 and principals.

15 JUDGE SIPPEL: Is this it?

16 MR. COHEN: That's what I believe,  
17 and that's why I'm objecting, but this was a  
18 litigation meeting, and I think that there's  
19 much prejudicial information in here.

20 Subsequent to that meeting I agree  
21 with Ms. Wallman. There was a meeting in  
22 Stanford, Connecticut, in July, in which an

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1 effort was made to gain carriage. I would  
2 view that deck as being like all of the other  
3 decks that Wealth is presenting, and we would  
4 not have an objection to this. -

5 But this document, including these  
6 last couple of pages, I wasn't at the meeting,  
7 but it contains, you know, why Wealth is not  
8 being treated fairly, the interests of the  
9 FCC. You know, the materials that are in here  
10 were presented at a meeting in which  
11 essentially we were being told if you don't  
12 carry us, we're going to bring a carriage  
13 complaint.

14 And I don't think that that's  
15 appropriate or probative information. We can  
16 hear testimony about the meeting. If there is  
17 a deck from that July meeting, which was an  
18 ordinary business presentation, I would not  
19 object.

20 MS. WALLMAN: If I may, Your  
21 Honor, I think there may be a small amount of  
22 confusion here, and if Your Honor would

1 consider reserving ruling on this, and the  
2 source of my discomfort here is that the  
3 meeting that you're referring to, the first  
4 meeting, I thought was delineated with a slide  
5 that specifically said this is what we're  
6 about.

7 So there may be some confusion and  
8 I accept responsibility for --

9 MR. COHEN: Well, we can try to  
10 resolve it. Sure, reserving is fine. We can  
11 try to work that out.

12 JUDGE SIPPEL: That's fine. We'll  
13 just reserve then on consulting what is WTV  
14 Exhibit 97. Thank you.

15 (Whereupon, the document referred  
16 to was marked as WealthTV Exhibit  
17 No. 97 for identification.)

18 JUDGE SIPPEL: Now, those are  
19 Bates numbers, by the way. I've got them as  
20 3258 to 3292. Did I get that right?

21 MR. COHEN: Three, two, five,  
22 seven, Your Honor.

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1 JUDGE SIPPEL: Where did you --

2 MR. COHEN: Five, seven.

3 JUDGE SIPPEL: Right, 57 to 92.

4 MR. COHEN: Yes.

5 JUDGE SIPPEL: All right. That  
6 takes care of Volume 2. Volume 3.

7 (Whereupon, the document referred  
8 to was marked as WealthTV Exhibit  
9 No. 98 for identification and  
10 received in evidence.)

11 MR. ROSE: Ninety-eight, there  
12 appear to be no objections.

13 JUDGE SIPPEL: Hold it. I've got  
14 to get mine.

15 All right. Ninety-eight, 98, yes,  
16 sir.

17 MR. ROSE: Ninety-eight is a  
18 letter to Mr. Goldberg. There appear to be no  
19 objections to it.

20 MR. COHEN: Correct, Your Honor.

21 JUDGE SIPPEL: Okay. Exhibit 98  
22 is a letter, and it's dated October 8, 2007,

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1 and it's from Mr. Goldberg, who is at Time  
2 Warner, or it's to -- I'm sorry. I apologize.

3 It's a WealthTV letter to Mr. Eric  
4 Goldberg, and he is the Senior Director of  
5 Programming at Time Warner Cable, and there is  
6 no objection. So it has been identified, and  
7 it will be received. Thank you.

8 (Whereupon, the document referred  
9 to was marked as WealthTV Exhibit  
10 No. 98 for identification and  
11 received in evidence.)

12 MR. ROSE: Ninety-nine to 104, I  
13 believe, are all call reports that we  
14 discussed earlier and that we're going to  
15 recommend.

16 MR. MILLS: Your Honor, you are  
17 correct. They are all from 2004. I said  
18 there might have been some in 2005. That's  
19 not true. They are all 2004.

20 JUDGE SIPPEL: Thank you.

21 MR. MILLS: All the call reports.

22 JUDGE SIPPEL: Thank you. Okay.